

ESTTA Tracking number: **ESTTA682954**

Filing date: **07/10/2015**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	E. & J. GALLO WINERY
Granted to Date of previous extension	07/15/2015
Address	600 YOSEMITE BOULEVARD MODESTO, CA 95354 UNITED STATES
Attorney information	Steven M. Weinberg Holmes Weinberg, PC 30765 Pacific Coast Hwy. Suite 411 Malibu, CA 90265 UNITED STATES hwtrademarks@gmail.com, msalvatore@holmesweinberg.com Phone:310 457 6100

Applicant Information

Application No	86412093	Publication date	03/17/2015
Opposition Filing Date	07/10/2015	Opposition Period Ends	07/15/2015
Applicant	Conscious Cultures LLC 615 Pauls Creek Rd Afton, VA 22920 UNITED STATES		

Goods/Services Affected by Opposition


Class 030. First Use: 2011/05/31 First Use In Commerce: 2011/05/31
All goods and services in the class are opposed, namely: Kombucha tea

Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
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Marks Cited by Opposer as Basis for Opposition


U.S. Registration No.	1792682	Application Date	07/13/1992
Registration Date	09/14/1993	Foreign Priority Date	NONE
Word Mark	BAREFOOT		


Design Mark	
Description of Mark	NONE
Goods/Services	Class 025. First use: First Use: 1987/10/29 First Use In Commerce: 1987/10/29 jackets, sweaters, sweat shirts, T-shirts, tank tops, swim suits, [pants,] skirts, shorts, caps, hats and belts

U.S. Registration No.	2022700	Application Date	10/05/1988
Registration Date	12/17/1996	Foreign Priority Date	NONE
Word Mark	BAREFOOT		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 033. First use: First Use: 1986/05/07 First Use In Commerce: 1986/05/07 WINE		

U.S. Registration No.	2022845	Application Date	10/04/1994
Registration Date	12/17/1996	Foreign Priority Date	NONE
Word Mark	BAREFOOT		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 033. First use: First Use: 1988/06/20 First Use In Commerce: 1988/06/20 wine		

U.S. Registration No.	2022699	Application Date	10/05/1988
Registration Date	12/17/1996	Foreign Priority Date	NONE
Word Mark	NONE		

Design Mark	
Description of Mark	NONE
Goods/Services	Class 033. First use: First Use: 1986/05/07 First Use In Commerce: 1986/05/07 WINE

U.S. Registration No.	4322210	Application Date	06/07/2012
Registration Date	04/16/2013	Foreign Priority Date	NONE
Word Mark	BAREFOOT REFRESH		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 033. First use: First Use: 2012/07/12 First Use In Commerce: 2012/07/12 Alcoholic beverages except beers		

U.S. Registration No.	3031999	Application Date	10/22/2004
Registration Date	12/20/2005	Foreign Priority Date	NONE
Word Mark	BAREFOOT BUBBLY		

Design Mark	BAREFOOT BUBBLY
Description of Mark	NONE
Goods/Services	Class 033. First use: First Use: 1998/06/25 First Use In Commerce: 1998/06/25 Alcoholic beverages, namely, wines, sparkling wines, and champagnes


U.S. Registration No.	4219513	Application Date	12/13/2011
Registration Date	10/02/2012	Foreign Priority Date	NONE

Word Mark	BAREFOOT WINE WALK FOR A CAUSE
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Design Mark	
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Description of Mark	The mark consists of a stylized image of sunrays appearing to emanate from a stylized image of a sun with a barefoot print appearing on top of the sun and rays. The words "BAREFOOT WINE WALK FOR A CAUSE" all to the left of the barefoot print.
Goods/Services	Class 033. First use: First Use: 2012/04/30 First Use In Commerce: 2012/04/30 Alcoholic beverages except beers

U.S. Registration No.	3946345	Application Date	08/23/2010
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Registration Date	04/12/2011	Foreign Priority Date	NONE
Word Mark	BAREFOOT WINE BEACH RESCUE PROJECT		
Design Mark			
Description of Mark	<p>The mark consists of a purple circle with the words "BAREFOOT WINE BEACH RESCUEPROJECT" superimposed in white stylized letters on the circle. Centered within the circle on a white background is a blue, yellow and white cross. The top diagonal section of the cross is blue in color and the bottom diagonal section is yellow. White wavy lines run diagonally across both the blue and yellow sections of the cross. A purple footprint, outlined in white, is superimposed over the cross.</p>		
Goods/Services	<p>Class 033. First use: First Use: 2007/06/30 First Use In Commerce: 2007/06/30 Wines</p> <p>Class 035. First use: First Use: 2007/06/30 First Use In Commerce: 2007/06/30 Charitable services, namely, organizing and conducting volunteer programs and community service projects</p>		

Attachments	74293677#TMSN.png(bytes) 73756067#TMSN.png(bytes) 85646393#TMSN.png(bytes) 78504697#TMSN.png(bytes) 85494539#TMSN.png(bytes) 85113982#TMSN.png(bytes) 2015.07.10_Notice of Opposition re BAREFOOT BUCHA.pdf(170016 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/Nelda Piper/
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Name	Nelda Piper
Date	07/10/2015

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In re Serial No. 86/412,093

E. & J. Gallo Winery,

Opposer,

v.

Conscious Cultures LLC,

Applicant.

Opposition No. _____

NOTICE OF OPPOSITION

TO: ASSISTANT COMMISSIONER FOR TRADEMARKS
BOX TTAB –FEE
2900 Crystal Drive
Arlington, VA 22202-3513

Opposer E. & J. Gallo Winery (“Gallo”), a corporation organized and existing under the laws of the State of California, believes that it would be damaged by registration of the above-referenced mark, and hereby opposes the same. As grounds for this Opposition, Gallo respectfully alleges as follows:

1. Gallo is a corporation organized and existing under the laws of the State of California, having a place of business at 600 Yosemite Blvd, Modesto, California 95354.
2. Gallo is the exclusive owner in the United States of, *inter alia*, the following federally registered BAREFOOT® word and design marks (collectively, the “BAREFOOT® Marks”):

Reg. Number	Reg. Date	First Use in Commerce	Trademark	Goods/Services
1792682	09/14/1993	10/29/1987	BAREFOOT & Footprint Design	Jackets, sweaters, sweat shirts, T-shirts, tank tops, swim suits, pants, skirts, shorts, caps, hats and belts
2022700	12/17/1996	05/07/1986	BAREFOOT	Wine
2022845	12/17/1996	06/20/1988	BAREFOOT	Wine
2022699	12/17/1996	05/07/1986	Footprint Design	Wine
4322210	04/16/2013	07/12/2012	BAREFOOT REFRESH	Alcoholic beverages except beers
3031999	12/20/2005	06/25/1998	BAREFOOT BUBBLY	Alcoholic beverages, namely, wines, sparkling wines, and champagnes
4219513	10/02/2012	04/30/2012	BAREFOOT WINE WALK FOR A CAUSE & Footprint Design	Alcoholic beverages except beers
3946345	12/07/2010	06/30/2007	BAREFOOT WINE BEACH RESCUE PROJECT	Wines; Charitable services, namely, organizing and conducting volunteer programs and community service projects

3. These registrations are valid and enforceable, and Gallo's exclusive rights in Reg. Nos. 1792682, 2022700, 2022845, 2022699 and 3031999 are incontestable.

4. Since at least as early as 1986, Gallo and its predecessor have used the BAREFOOT® Marks in connection with wines and related services and products.

5. The mark subject to this Opposition is BAREFOOT BUCHA, Serial No. 86/412,093 (the "Opposed Mark") applied for in International Class 030 for "Kombucha tea."

6. Applicant filed United States Application Serial No. 86/412,093 with the U.S. Patent and Trademark Office on or about October 1, 2014. The Application for the Opposed Mark is based on actual use.

7. Because Gallo's predecessor in interest first used the BAREFOOT® Marks in the late 1980's, twenty-five years before Applicant filed its application for or began using the Opposed Mark, and such use has been continuous, Gallo has priority of use.

8. By virtue of Gallo's long, continuous, extensive and exclusive use, marketing, promotion and sale of wines and related services and products under the BAREFOOT® Marks, the BAREFOOT® Marks have come to be recognized by the relevant public as identifying wines, services and products as having their origin in or otherwise associated exclusively with Gallo.


9. The Opposed Mark for the International Class 030 goods is confusingly similar in appearance, sound and meaning to the BAREFOOT® Marks. Specifically, the Opposed Mark and the BAREFOOT® Marks are both comprised of and begin with the word BAREFOOT. Thus, the Opposed Mark evokes the same or a highly similar connotation as the BAREFOOT® Marks. Further, the Opposed Mark is used for a beverage product that is sold in some of the same channels of trade as products sold under the BAREFOOT® Marks. Accordingly, it is likely that consumers will mistakenly believe that the Opposed Mark for the International Class 030 goods is connected to or associated with Gallo or its BAREFOOT® Marks.

10. The registration of the Opposed Mark would be inconsistent with Gallo's rights in its BAREFOOT® Marks and will cause damage to Gallo.

WHEREFORE, Gallo respectfully prays that registration of the Opposed Mark not be permitted.

DATED this 10th day of July, 2015.

Respectfully submitted,

By: 
Steven M. Weinberg
Holmes Weinberg, PC
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Malibu CA 90265
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Email: smweinberg@holmesweinberg.com

Counsel for Opposer E. & J. Gallo Winery

Certificate of Service

The undersigned hereby certifies that a true copy of the foregoing Notice of Opposition was served by first class mail to Applicant and Applicant's counsel at the following addresses:

Conscious Cultures LLC
615 Pauls Creek Rd.
Afton, VA 22920

Ryan M. Kaiser
Amin, Talati & Upadhye, LLC
55 W. Monroe St., Suite 3400
Chicago, IL 60603

Dated: July 10, 2015

By: /Nelda Piper/
Nelda Piper